

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.17 of 2006

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1. Lalan Chaudhary, son of Babu Lal Chaudhary
 2. Babu Lal Chaudhary, son of Rajha Chaudhary
 3. Baban Chaudhary, son of Babulal Chaudhary
 4. Overseer Chaudhary @ Osihar Chaudhary, son of Prayag Chaudhary @
Prakash Chaudhary
 5. Ramjit Chaudhary, son of Kapildeo Chaudhary
 6. Hira Lal Chaudhary, son of Late Rajha Chaudhary
- All residents of Village-Fatehpur Tola Dhaserwa P.O.-Machhagar, P.S.-
Meerganj, District-Gopalganj

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, *Amicus Curiae*
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 12-07-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae* for the appellants and Mrs. Anita Kumari Singh, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction dated 28.12.2005 and order of sentence dated 29.12.2005 passed by learned Additional District Judge, Fast Track court no. III, Gopalganj in connection with Sessions Trial No. 280 of 1997, arising out of Mirganj P.S. Case No. 230 of 1994



registered under Sections 147/ 148/ 323/ 324/ 325/326/307/149/427 and 447 of the Indian Penal Code and while awarding the sentence, learned Trial Court directed all the appellants to undergo rigorous imprisonment for Seven years for the offence punishable under Sections 307/149 I.P.C and to pay a fine of Rs. 2000/- each and in default of payment of fine, they were directed to undergo simple imprisonment for six months. The learned Trial Court further sentenced all the appellants to undergo rigorous imprisonment for six months for committing the offence under Section 323 of the I.P.C. The accused appellants were further sentenced to undergo rigorous imprisonment for one year for committing the offence under Section 147 I.P.C. They were also sentenced to undergo rigorous imprisonment for one month for committing the offence under Section 447 of the I.P.C. The learned Trial Court further sentenced the appellants Lallan Chaudhary, Baban Chaudhary and Oversheer



Chaudhary to undergo rigorous imprisonment for one year and six months for committing the offence under Section 148 I.P.C and further appellants Lalan Chaudhary, Baban Chaudhary and Oversheer Chaudhary were sentenced to undergo rigorous imprisonment for one year and six months for committing the offence under Section 324 I.P.C and further appellants Lalan Chaudhary, Baban Chaudhary and Oversheer Chaudhary were sentenced to undergo rigorous imprisonment for three years and six months for committing the offence under Section 325 I.P.C and to pay a fine of Rs. 1000/- and in default of payment of fine, they were sentenced to undergo simple imprisonment for three months. The learned Trial Court further sentenced appellants Lalan Chaudhary, Baban Chaudhary and Oversheer Chaudhary to undergo rigorous imprisonment for five years for committing the offence under Section 326 I.P.C and to pay a fine of Rs. 1000/- each and in default of payment of fine, they



were sentenced to undergo simple imprisonment for six months. The appellants Baban Chaudhary, Oversheer Chaudhary and Ramjit Chaudhary were further sentenced to undergo rigorous imprisonment for one year for committing the offence under Section 427 of the I.P.C. All the sentences were directed to run concurrently.

3. The prosecution case in short, is that, on 30.10.1994 at about 3:00 P.M. in the noon, the informant Madan Mohan Singh (P.W- 4) went to see his field in which sugar-cane was grown. It is alleged that all the accused persons were present in the said field of the informant (P.W. 4) armed with deadly weapons and out of them appellants Baban Chaudhary, Overseer Chaudhary and Ramjit Chaudhary were cutting sugar cane for feeding the cattle. It is further alleged that when the informant told the accused persons not to do so, upon which the appellants became angry and appellants Hira Lal Chaudhary and Babu Lal Chaudhary



asked his companion to kill the informant. It is further alleged that thereafter, appellants Ramjit Chaudhary caught hold the informant and other accused persons/appellants namely, Lallan Chaudhary, Baban Chaudhary and Overseer Chaudhary assaulted the informant by means of *Lathi*, *Farsa*, and *Dab* and due to which the informant suffered injuries on his head and both of his hands and feet. It is further alleged that when the informant raised alarm, the witnesses Narad Pandey (P.W.1) Ramashish Baitha (P.W. 2) and other witnesses who were working in their respective fields came there and carried the informant to the Government Hospital where he was given treatment.

4. On the basis of the aforesaid *fardbeyan* of the informant, Mirganj P.S. Case No. 230 of 1994 was registered against the accused appellants and after completion of the investigation, charge-sheet was submitted and thereafter cognizance was taken and the case was committed to the Court of Sessions for trial.



5. During the course of trial, altogether six witnesses were examined on behalf of the prosecution.

6. P.W. 1, Narad Pandey has deposed in his examination-in-chief that the alleged occurrence took place five years ago. On the alleged date and time of the occurrence, he was present in his field. The land of the informant where sugar cane was grown, was situated at a distance of 1 to 1/2 bighas from his field. After *hulla* when he went at the place of occurrence, he saw that appellants Lallan Chaudhary, Baban Chaudhary, Overseer Chaudhary, Ramjit Chaudhary and Babu Lal Chaudhary were assaulting the informant. P.W. 1 has further deposed that appellant Overseer, Baban and Lallan Chaudhary were armed with *Farsa* and remaining appellants were armed with *Lathi*. This witness has further deposed that appellant Lallan Chaudhary assaulted the informant by means of *Farsa* on the head of the informant whereas appellant Baban Chaudhary assaulted the informant by means of *Farsa*



on his ear and the remaining appellants assaulted him by means of *Lathi*. P.W. 1 has also stated that after that the accused/appellants left the place of occurrence and he along with Ramashish Baitha (P.W. 2) carried the informant to his house and after that he was carried away to the Hathua Hospital. P.W. 1 has also stated that accused persons have cut away the sugar cane crop of the informant and due to which the alleged occurrence took place. This witness appears to be the eye witness of the alleged occurrence.

7. P.W. 2 Ramashish Baitha is also an eye witness of the alleged occurrence who has deposed in his examination-in-chief that the said occurrence took place at about five years ago in the noon and at that time he was going to his paddy field and after hearing *hulla* he went to the field of the informant. P.W. 2 has further stated that an altercation was going on in between the informant and the appellants and during this altercation, the occurrence took place. This witness



has further deposed that appellants Lallan Chaudhary assaulted Madan Mohan Singh (informant/P.W. 4) by means of *Farsa* on his head and appellant Baban Chaudhary also assaulted him by means of *Farsa* on his ear and after that the informant (P.W. 4) fell down and thereafter, remaining accused persons assaulted him by means of *Lathi*. P.W. 2 has further deposed that ankle of the right hand of the informant got fractured. He has explained the reason that since the appellants were cutting away the sugar cane crop of the informant and the informant objected, due to which the alleged occurrence took place. This witness also appears to be the eye witness of the alleged occurrence.

8. P.W. 3 Bhubneshwar Singh is the brother of the informant (P.W. 4) who has deposed in his examination-in-chief that on the alleged date and time of the occurrence, he was coming to the orchard of Mukesh Pandey after seeing his field when he heard *hulla* from his field. He then reached at the place of



occurrence and saw that his brother Madan Mohan Singh (informant) was surrounded by the appellants and they were abusing him. P.W. 3 has further stated that appellants Lallan Chaudhary and Baban Chaudhary were armed with *Farsa* and remaining accused persons were armed with *Lathi*. Thereafter, the appellants Hiralal Chaudhary and Babulal Chaudhary gave order to kill the informant, upon which the appellants Lallan Chaudhary assaulted the informant by means of *Farsa* on his head and appellant Baban Chaudhary assaulted the informant by means of *Farsa* on his ankle, due to which the informant received cut injury on his left ear. The remaining accused persons assaulted the informant by means of *Lathi*. P.W.3 has further deposed that the accused persons had cut away the sugar-cane crops of Madan Mohan Singh (informant) and due to which the alleged occurrence took place. In his cross-examination, P.W. 3 has mentioned the presence of P.W. 1 Narad Pandey and P.W. 2 Ramashish Baitha on the place of



occurrence.

9. P.W. 4 Madan Mohan Singh is the informant of this case who has deposed in his examination-in-chief that the alleged occurrence took place on 23.10.94 at about 3.00 P.M. in the noon and at that time, he had gone to his sugar cane field to watch the same. When he reached at his field, he saw that appellants were present there armed with *Lathi* and *Farsa*. P.W. 4 has further deposed that appellants Baban Chaudhary, Overseer Chaudhary and Ramjit Chaudhary were cutting sugar cane crops for feeding their cattle and when he objected not to cut the same upon which the appellants started abusing him and after that an altercation took place. It is further deposed that appellants Babu Lal Chaudhary and Hiralal Chaudhary gave order to kill the informant (P.W. 4) upon which appellants Ramjit Chaudhary caught hold of him and remaining accused persons surrounded him. P.W. 4 has further deposed that appellants Lallan Chaudhary



assaulted him by means of *Farsa* on his head and appellant Baban Chaudhary assaulted him by means of *Farsa* on his ear. The appellant Ramjit Chaudhary also assaulted him on his head by means of *Lathi* and appellant Overseer Chaudhary assaulted him (P.W. 4) by means of *Lathi* on his left hand. P.W. 4 has further deposed that appellant Babu Lal Chaudhary assaulted him by means of *Lathi* on his foot and appellant Hira Lal Chaudhary assaulted him on his back by means of *Lathi*. P.W. 4 has further stated that when appellant Ramjit Chaudhary caught hold of him, he raised *hulla* upon which the witnesses, Narad Pandey (P.W. 1), Ramashish Baitha (P.W. 2) and Bhubneshwar Singh (P.W. 3) came there and in their presence, the accused appellants assaulted him. Thereafter, these witnesses carried him to his house and after that he was taken to the hospital where the police came and recorded his *fardbeyan*.

10. P.W. 5 Dr. G.D. Tiwari is the doctor who,



at the relevant time, was posted as Medical Officer in the Hathua Hospital and has examined the informant Madan Mohan Singh(P.W. 4) on 23.10.1994 in Sub-Divisional Hospital at Hathua at 4.15 P.M. on the same date and has found the following injuries on the person of the informant Madan Mohan Singh:-

- (i) Multiple injuries on head with depression:-*
 - (a) lacerated cut on left side 2"x 1/2" x bone deep;*
 - (b) Lacerated cut on left side 1 1/2" x 1/2" x bone deep;*
 - (c) Incised cut on mid scalp 1" x 1/4" x bone deep*
 - (d) Incised cut on left ear involving 3/4 of pinna and*
above it.
- (ii) Bruise on left elbow 2" x 2"*
- (iii) Bruise below left knee 2"x "2*
- (iv) Bruise on right palm on posterior aspect 1 1/2" x 1"*

11. The injury no. (i) is multiple and grievous, rest injuries are simple.

12. Injuries No. (i) (c) and (d) are caused by heavy sharp cutting weapon and rest injuries are caused by hard blunt substance.



13. X-ray report no. 167/168 (f) dt. 28.10.94, Janta X-ray, Mirganj shows depression on parietal bone.

Duration-within 12 hours.

14. Identification mark- Mole on right side of abdomen.

15. P.W. 6 Sanyog Singh is a formal witness who has proved the case diary vide Ext.-4.

16. On the other hand, the defence has also examined five witnesses in support of its case.

17. D.W. 1 Munna Kumar Yadav has deposed in his examination-in-chief that the alleged occurrence took place about 10 years ago and at that time he was grazing cattle by the side of orchard and was eating sugar-cane. In the meanwhile, the informant Madan Mohan Singh (P.W. 4) came there armed with *Lathi* and put him down by pulling his neck and also started assaulted him. On his *hulla*, the other surrounding people including Ajay, Vijay came there and assaulted



the informant (P.W. 4) by means of *Lathi* and bricks. The present appellants have not assaulted the informant. In his cross-examination this witness has stated that he has not examined himself by the doctor nor he has instituted any case against the informant (P.W. 4).

18. D.W. 2 Ganesh Chaudhary has deposed in his examination-in-chief that the occurrence took place about 10 years ago. On the alleged date and time of occurrence, he was grazing his buffalo in his field and D.W. 1 Munna Kumar Yadav was plucking sugar-cane and was eating the same. In the meanwhile, the informant (P.W. 4) came there and started assaulting D.W. 1 and after that grazers assaulted the informant. D.W. 2 has further stated that accused persons (appellants) have not assaulted the informant. He has been cross-examined by the defence and in his cross-examination he has stated that D.W. 1 got himself treated.



19. D.W. 3 Ramagya Rai has deposed that the occurrence took place about 10-11 years ago and at that time, he was present in a shop of Goldsmith and house of appellant Hiralal Chaudhary was being constructed at that time. D.W. 3 has further deposed that Bhubneshwar Singh (P.W. 3), brother of informant (P.W. 4) was also present there in a betel shop and P.W. 3 enquired from the appellant Hiralal Chaudhary about the quarrel upon which appellant Hiralal Chaudhary told him that he knew nothing about it. D.W. 3 has further stated that informant has falsely implicated the appellants due to election dispute. D. W. 3 in his cross-examination has stated that he has heard nothing about the assault made on Munna Kumar Yadav (D.W. 1).

20. D.W. 4 Ali Ahmad Khan has also deposed that informant (P.W. 4) has assaulted Munna Kumar Yadav (D.W. 1) when he was eating sugar-cane and after that 8 to 9 persons assaulted the informant and



the appellants have not assaulted the informant. In his cross-examination, this witness has admitted that he has been called by the appellant Hiralal Chaudhary to depose in his favour.

21. D.W. 5 Ramautar Manjhi has deposed in his examination-in-chief that the occurrence took place about 10-11 years ago and on the alleged date and time of the occurrence, he was grazing. He further deposed that Munna Kumar Yadav (D.W. 1) was eating sugar-cane and he reached on the place of occurrence after the alleged occurrence and saw that informant (P.W. 4) was going and he found injuries on the person of D.W. 1.

22. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellants has submitted that appellants are innocent and they have falsely been implicated in this case. The entire proceeding leading to the present appeal conducted by the trial court is without jurisdiction and the trial court has completely failed to



appreciate the medical evidence made by the prosecution. The medical report of the injured (informant) prepared by the doctor (P.W. 5) does not prove the case as against the appellants under Section 307 I.P.C. Hence, during the course of investigation, the Supervising Authority was of the opinion that the injuries found on the person of the informant was required to be re-examined by a Medical Board, but in spite of several notice to the informant (P.W. 4), he did not appear and avoided his medical examination by a Medical Board and this fact was also admitted by the informant (P.W. 4) in his cross-examination where he accepted that though a Medical Board was constituted by the Police, he did not appear. The X-ray report of the injured (P.W. 4) also does not show any fracture, rather it shows depression on parietal bone. Therefore, the opinion of the doctor regarding nature of injuries which is the basis of conviction and sentence of the appellants does not appear to be trustworthy. Both the parties



were inimical with each other from before and the alleged occurrence took place between the parties at the spur of the moment. Moreover, all the material P.W.s are closely related to the informant and are highly interested, hence, it is not safe to put reliance on their evidences. Learned *Amicus Curiae* further contended that in this case, the Investigating Officer has not been examined. Hence, in the absence of examination of the Investigating Officer, the place of occurrence was not proved. It is the specific case of the informant (P.W. 4) that appellant Nos. 1 and 3 namely Lalan Chaudhary and Baban Chaudhary inflicted *Farsa* blow on his person but learned Trial Court has also convicted appellant No. 4 namely Oversheer Chaudhary along with appellant Nos. 1 and 3 under Section 326 of the Indian Penal Code.

23. *In contra*, learned A.P.P appearing on behalf of the State has submitted that the judgment of conviction and order of sentence to the



convicts/appellants is based on consistent oral and medical evidences. It is alleged that convicts/appellants had assaulted the informant (P.W. 4) by means of deadly weapons with an intention to kill him. There is no need of any interference with the judgment of conviction and order of sentence of the Court below. The present appeal has no force and is fit to be dismissed and the judgment of conviction and order of sentence as against the appellants is fit to be sustained.

24. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution during trial and considering the submissions raised on behalf of the learned *Amicus Curiae* as well as learned A.P.P, this Court finds that the essential ingredients to prove the charge under Section 307 of the Indian Penal Code are missing for proving the charge under Section 307 I.P.C, three ingredients are essential (1) that the death of human being was attempted (2) that such death was attempted to be



caused by, or in consequence of the act of the accused
(3) that such act was done with the intention of causing death or that death was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death (b) or was sufficient in ordinary course of nature to cause death.

25. In this case, from perusal of the oral and documentary evidence, it is apparent that there is no accusation of repetition the blow as against the convicts/appellants namely Lalan Choudbary and Baban Chaudhary who assaulted the informant (P.W. 4) by means of *Farsa* on his head and ear respectively. It is also apparent that there is no intervening circumstances to restrain the appellants for repeatedly assault the informant (P.W. 4) or kill him. In this case, the appellants Lalan Chaudhary and Baban Chaudhary are alleged to have assaulted the informant (P.W. 4) by means of *Farsa*. From perusal of the injury report of the informant (P.W. 4), it appears that the informant



sustained only two injuries on the head and ear respectively. There was no allegation of repetition of blow against these appellants. There was no intention to kill the informant. No inference could be gathered that the appellants Lalan Choudbary and Baban Chaudhary had any intention to kill the informant (P.W. 4).

26. After scrutinizing the oral and medical evidence, this Court is of the view that the prosecution has failed to prove the charge as against the appellants under Section 307 of the Indian Penal Code.

27. This Court also finds that the essential ingredients to prove the charge under Section 326 of the Indian Penal Code is also missing in the injury reports of the injured prepared by the Doctor (P.W. 5) as well as the evidence of P.W. 5 adduced at the time of his examination-in-chief.

28. Section 326 deals with the offence of voluntarily causing hurt by dangerous weapons or means.



29. Sections 325 and 326, like the two Sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned thereunder. The two latter Sections apply to the case of causing "grievous hurt" and the immediately preceding two Sections to the case of 'hurt'.

30. Grievous hurt" has been defined in Section 320 of the Indian Penal Code which read as follows:

"320 Grievous Hurt – The following kinds of hurt only are designated as "grievous"-

First – Emasculation.

Secondly- Permanent privation of the sight of either eye.

Thirdly – Permanent privation of the hearing of either ear.

Fourthly – Privation of any member or joint.

Fifthly – Destruction or permanent impairing of the powers of any members or joint.



Sixthly – Permanent dis-figuration of the head or face.

Seventhly – Fracture or dislocation of a bone or tooth.

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

31. Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

32. The expression “any instrument which, used



as a weapon of offence, is likely to cause death” has to be gauged taking note of the heading of the Section. What would constitute a ‘dangerous weapon’ would depend upon the facts of each case and no generalization can be made.

33. The heading of the Section provides some insight into the factors to be considered. The essential ingredients to attract Section 326 I.P.C are : (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. As was noted in a case reported in the case of State of U.P. v. Indrajeet Alias Sukhatha reported in (2000(7) SCC 249), there is no such thing as a regular or earmarked weapon for committing murder or for that matter a hurt. Whether a particular article can *per se* cause any serious wound or grievous hurt or injury has to be determined factually. At this juncture, it would be relevant to note that in some provisions e.g. Sections



324 and 326 expression "dangerous weapon" is used. The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not. That would determine whether in the case Section 325 or Section 326 would be applicable.

34. The doctor (P.W.5) had prepared the injury reports of the injured on behalf of the informant's side. In the X-ray report of the injured (P.W. 4), there was no mentioning of any fracture. The doctor (P.W. 5) has mechanically mentioned the injuries to be grievous in nature without explaining the reason in respect of grievousness of the injuries which were found on the persons of injured (informant) and in the absence of any fracture in the X-ray report, the injury report appears to be not in consonance with the prosecution evidence. Moreover, both the parties were on inimical terms from before and out of a spur, the occurrence



took place where the informant sustained injuries. In respect of non-examination of the Investigating Officer, I find much force in conclusion drawn by the learned Trial Court vide para 22 of the impugned judgment which reads as under:-

“22. So far the submission of defence regarding non-examination of I.O. is concerned, I feel that non-examination of I.O is not vital because allegation made against the accused persons is corroborated by the witnesses on the factum of the occurrence which has also been supported by medical expert. Therefore, non-examination of I.O is not vital to prosecution case. It also appears that the prosecution has fully proved the genesis of the alleged occurrence on going through the evidence of prosecution witnesses.”

35. Considering the discussions made above, this Court finds that the prosecution has failed to prove the charge as against the appellants under Sections 307/149 of the Indian Penal Code. The Trial Court has also failed to prove the charge as against appellants



Lalan Chaudhary, Baban Chaudhary and Oversheer Chaudhary under Sections 325, 326 of the Indian Penal Code. Since the appellant Oversheer Chaudhary is alleged to have assaulted the informant (P.W. 4) with *Lathi* which is not a dangerous weapon, the charge against him also does not fit to be proved under Section 324 of the Indian Penal Code. So far as appellant Nos. 1 and 3 namely Lalan Chaudhary, Baban Chaudhary are concerned, since they are alleged to have assaulted the informant (P.W. 4) with *Farsa*, a dangerous weapon, at best the case is proved against them under Section 324 of the Indian Penal Code.

36. Hence, the sentences awarded to the appellants under Sections 307/149 I.P.C as well as against appellants Lalan Chaudhary, Baban Chaudhary and Oversheer Chaudhary under Sections 325, 326 of the Indian Penal Code as also against appellant Oversheer Chaudhary under Section 324 of the Indian Penal Code are hereby set aside. Rest of the sentences



awarded to the appellants are hereby sustained and confirmed.

37. In this case, the appellants had faced ordeal of trial since year 1997. This appeal relates to the year 2006. The appellant Nos. 1 and 3 had remained in jail for about 10 months whereas appellant Nos. 2, 4, 5, 6 were in custody for about 12 days.

38. Considering the period of custody as well as ordeal of trial, the appellants are sentenced to the period already undergone by them.

39. The appeal stands dismissed with the aforesaid modification of judgment of conviction and order of sentence.

40. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 7000/-(Seven Thousands) towards his professional



fee for extending valuable assistance to this Court in deciding this appeal.

41. Accordingly, the appeal stands dismissed with the aforesaid modification in the judgment of conviction and order of sentence.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	08/07/2024
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